

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

FILED
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LAURA A. HUGGS
CLERK

ELAINE L. CHAO, Secretary of Labor,)
United States Department of Labor,)
Plaintiff,)

) Civil Action No.:

v.)

3 : 07-cv- 143 -RLY -WGH

BUVANTO, INC. d/b/a JIMMY JOHN'S)
GOURMET SANDWICHES, and)
KENNETH E. BUTLER, II,)
an individual,)
Defendants.)

COMPLAINT

Plaintiff, **ELAINE L. CHAO**, Secretary of Labor, United States Department of Labor, brings this action to enjoin defendants, **BUVANTO, INC. d/b/a JIMMY JOHN'S GOURMET SANDWICHES, and KENNETH E. BUTLER, II**, from violating the provisions of sections 6, 7, 11 and 15 of the Fair Labor Standards Act of 1938, as Amended (29 U.S.C. §201, et seq.), hereinafter called the Act, pursuant to section 17 of the Act; and to restrain defendants from any withholding of compensation found by the court to be due under the Act to employees identified on Exhibit A, attached hereto and made a part hereof.

I

Jurisdiction of this action is conferred upon the court by section 17 of the Act.

II

(a) Defendant, **BUVANTO, INC.**, is and at all times hereinafter mentioned was a corporation with an office and a place of business at 701 N. Burkhart Road, Evansville, Vanderburgh County, Indiana, within the jurisdiction of this court, and is and at all times hereinafter

mentioned was engaged under the name and style of **JIMMY JOHN'S GOURMET SANDWICHES** in the operation of a sandwich shop and in the performance of related types of activities.

(b) Defendant, **KENNETH E. BUTLER, II**, an individual, resides at 8711 Arcadia Drive, Newburgh, Warrick County, within the jurisdiction of this court, and at all times hereinafter mentioned acted directly or indirectly in the interest of the corporate defendant in relation to its employees.

III

Defendant **BUVANTO, INC. d/b/a JIMMY JOHN'S GOURMET SANDWICHES** is and at all times hereinafter mentioned was engaged in related activities performed through unified operation or common control for a common business purpose, and is and at all times hereinafter mentioned was an enterprise within the meaning of section 3(r) of the Act.

IV

Defendant **BUVANTO, INC. d/b/a JIMMY JOHN'S GOURMET SANDWICHES** at all times hereinafter mentioned was an enterprise engaged in commerce or in the production of goods for commerce within the meaning of sections 3(s)(1)(A) the Act in that said enterprise at all times hereinafter mentioned had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has and has had an annual gross volume of sales made or business done of not less than \$500,000.

V

Defendants have repeatedly the provisions of sections 6 and 15(a)(2) of the Act, by paying many of their employees wages at rates less than \$ 5.15 per hour prior to July 24, 2007 in workweeks when said employees were engaged in commerce and in the production of goods for commerce or were employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, as aforesaid.

VI

Defendants have repeatedly violated the provisions of sections 7 and 15(a)(2) of the Act, by employing many of their employees who in workweeks were engaged in commerce or in the production of goods for commerce, or who were employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, as aforesaid, for workweeks longer than forty hours without compensating said employees for their employment in excess of forty hours per week during such workweeks at rates not less than one and one-half times the regular rate at which they were employed.

VII

Defendants, employers subject to the provisions of the Act, repeatedly have violated the provisions of sections 11(c) and 15(a)(5) of the Act in that they failed to make, keep, and preserve adequate and accurate records of employees and the wages, hours and other conditions and practices of employment maintained by them as prescribed by regulations duly issued pursuant to authority granted in the Act and found in 29 CFR 516, in that records fail to show adequately and accurately, among other things, the hours worked each workday and the total hours worked each workweek with respect to many employees and the regular rates at which they were employed.

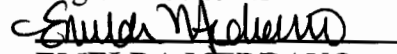
VIII

During the period since April 2005, defendants **BUVANTO, INC. d/b/a JIMMY JOHN'S GOURMET SANDWICHES, and KENNETH E. BUTLER, II** repeatedly and willfully violated the aforesaid provisions of the Act, as alleged. A judgment which enjoins and restrains such violations and includes the restraint of any withholding of payment of unpaid minimum wage and overtime compensation found by the court to be due to present and former employees under the Act is expressly authorized by section 17 of the Act.

WHEREFORE, cause having been shown, plaintiff prays judgment permanently enjoining and restraining defendants, their officers, agents, servants, employees, and those persons in active concert or participation with them, or acting in their interest and behalf, from violating the provisions of sections 6, 7, 11 and 15 of the Act, and for such other and further relief as may be necessary or appropriate, including the restraint of any withholding of minimum wage and overtime compensation found by the court to be due under the Act for the period from April 19, 2005 to August 1, 2006 to employees listed on Exhibit A, together with interest thereon from the date such back wages became due until the date back wages are finally paid and costs.

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